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THE 1959 LABOR LAW: RIGHTS & REMEDIES OF THE UNION MEMBER

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The Labor-Management Reporting and Disclosure Act of 1959[1] was enacted subsequent to the exposition of abuses, corruption, breaches of trust and disregard of the rights of union members as disclosed in the investigation[2] conducted by the Select Committee on Improper Activities in the Labor or Management Field.

The Act (LMRDA) is the result of the combination and radification of several bills. The reporting requirements, trusteeship provisions and election provisions are taken from the bill introduced by Senator Kennedy. The sections which involve the fiduciary obligations of union officers are taken from the Elliott bill. Title I, the Bill of Rights, originally espoused by Senator McClellan, is a modification[3] of his proposals.[4]

TITLE I

Title I guarantees to the union member certain rights not formerly cognizable in federal courts absent diversity jurisdiction. In addition to these rights, the individual member may have a cause of action under Sections 304(a), 501(b) and 609 which also will be briefly discussed.[5]

Section 101 (a) (1). This subsection[6] of Title I insures to each member equal rights and privileges to nominate candidates, vote[7] in union elections, attend membership meetings, and to participate in the deliberations and voting upon union business subject to reasonable rules and regulations in the union's constitution and by-laws. The rights here involved are limited to four. It is to be noted that the equal rights provision of the McClellan Amendment used

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An effort has been made to present *briefly* the statutory rights and remedies of the union member and a reference to a few practical problems that may arise. In addition, applicable case law has been included (to November 1960). For an extensive treatment including, *inter alia*, the reporting requirements and trusteeship provisions, see Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851 (1960).

1. 73 Stat. 519. The act will be referred to by section number only.
2. Act, §§ 2(a), (b), (c).
3. Hickey, *The Bill of Rights of Union Members*, 48 Geo. L.J. 226 (1959).
4. Sherman, *The Individual Member and the Union: The Bill of Rights Title in the Labor-Management Reporting and Disclosure Act of 1959*, 54 Nw. U. L. Rev. 803 (1960).
5. See also § 403 in regard to elections and existing rights and remedies.
6. 73 Stat. 522.
7. Section 401 (e) provides that, "Each member in good standing shall be entitled to one vote."

the word "including". Thus, by deletion of this word the provisions for equal rights are specifically limited.[8]

It is clear not only from the express language of the statute but from the authority of several decisions in the district courts that it is only the relationship of a member vis-a-vis the union that is protected.[9]

In *Jackson* v. *Martin Company*,[10] plaintiff alleged a denial of his rights under certain statutory safeguards. It was held that the court was without jurisdiction because it was plaintiff's status as a committeeman, and not the union-unionmember relationship that was involved (even though plaintiff was incidentally a union member).

Plaintiff's action was similarly dismissed in *Byrd* v. *Archer*[11] in which a wrongful denial by defendant of the right to be a candidate for the office of delegate to the Buildings Trades Council was alleged.

Strauss v. *Teamsters*[12] involved a dismissal of plaintiff as business agent under a mistaken interpretation by the union of Section 504 of the Act.[13] It was held that the rights embodied in Title I deal with ". . . the *membership in general* and their relationship, *as members*, with the union."

In *Johnson* v. *Local Union*,[14] a motion to dismiss as to non-members was sustained because actions under Title I require union membership.

In *Bennett* v. *Local 701*,[15] plaintiff alleged the wrongful discharge from employment as a field representative for the union. The court stated that the legislative history is clear that the purpose of Title I is to protect union members and not the employer-employee relationship.

Probably of more moment and certainly more nebulous will be the judicial determination of what is a reasonable rule or regulation. For example, in a local union with a mixed membership, it may be a reasonable limitation that only those who are directly concerned

8. Sherman, *supra* note 4 at 813.
9. Sherman, *spura* note 4 at 813, 814.
10. 180 F.Supp. 475 (D.Md. 1960).
11. 38 CCH Lab. L. Rep. para. 66,083 (S.D. Cal. 1959).
12. 38 CCH Lab. L. Rep. para. 66,073 (E.D. Pa. 1959).
13. Section 504 prohibits persons who have been convicted of robbery, bribery, extortion, embezzlement, grand larcency, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grevious bodily injury, or a violation of Title II or III of the Act, or conspiracy to commit such offenses, or who has been a member of the Communist party, from holding certain union offices. This prohibition is limited to five years after the conviction or membership.
14. 181 F.Supp. 734 (E.D. Mich. 1960).
15. 39 CCH Lab. L. Rep. para. 66,183 (D. Ore. 1960).

with a specific issue could vote on that issue.[16] Again, it may be reasonable to deny the right to vote to a member who is in arrears in payment of dues,[17] or until he has completed a period of apprenticeship,[18] or if he is retired. To the contrary, it would probably be unreasonable to deny the right to vote to a member who is employed on a part-time basis only, or if he is only a temporary employee. Certainly, the creation of a class of non-voting members would be contrary to the express provisions of the Act.[19]

The Secretary of Labor has issued a regulation[20] which states that, "A labor organization may, however, prescribe reasonable rules and regulations with respect to voting eligibility". Due to the citation of Section 101 (a) (1) in the regulation, it seems, according to Professor Cox,[21] that this was so worded to avoid an inconsistency between Sections 101 (a) (1) and 401 (e), although the latter section specifically provides that each member in good standing[22] is entitled to one vote.

The legislative history of the Act discloses that the status of a non-member seeking admittance to the union is not protected. An effort to include such protection was rejected with the defeat of the Powell Amendment which would have extended certain safeguards to minority groups and to non-members seeking to obtain membership in the union.[23]

Section 101 (a) (2). This subsection provides that every member shall have the right to meet and assemble freely with the other members; to express views and opinions; and at union meetings, to express opinions on candidates or upon union business, subject to established rules and regulations of the organization as to the conduct of the meeting. A proviso assures the union of the right to adopt and enforce reasonable rules as to the member's responsibility toward the union and to his refraining from conduct that would interfere with the performance of the legal and contractual obligations of the union.[24]

Thus it is fair to say that the union may place reasonable restrictions, but not prohibitions, upon the members in respect to the ex-

16. Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819 (1960).
17. See 401 (e) in respect to dues check-off.
18. 29 C.F.R. § 452.10 (1959).
19. *Ibid.*
20. *Ibid.*
21. Cox, *supra* note 16 at 834, n.52.
22. Section 3 (o) defines a "member in good standing".
23. 105 Cong. Rec. 14,388 (daily ed. Aug. 12, 1959).
24. Powell, *The Bill of Rights — Its Impact Upon Employers*, 48 Geo. L. Rev. 270, 274 (1959).

pression of their opinions, by virtue of the proviso in 101 (a) (2). It is to be noted here that although the rules must be established as reasonable, there is no requirement that they be embodied in the constitution or by-laws as is the case in 101 (a) (1). In addition, the delimiting of rights by reasonable rules is limited to occurrences at meetings. The only restriction upon the right to meet and assemble and to express views etc., other than at union meetings, is found in the proviso which would permit reasonable rules to proscribe any action of the members that would adversely affect the union as an institution.

One case has dealt with this subsection. In *McFarland* v. *Building Material Teamsters*,[25] plaintiff made a motion at a union meeting to suspend the business agent to await the outcome of the trial of the business agent on an indictment for bribery. The union's constitution provided for a trial, before removal, under such circumstances. It was held that the refusal of the president to put plaintiff's motion to a vote was not a violation of 101 (a) (2).

Section 101 (a) (3). Local unions are prohibited from raising dues and initiation fees and no special assessments shall be levied, so provides subsection 101 (a) (3). The exception to this prohibition is, in the case of a local union, if an increase in dues is approved by a majority vote of the members in good standing by secret ballot in a general or special membership meeting or in a membership referendum. If the former method is to be utilized, reasonable notice that such a matter is to be voted upon is a prerequisite.[26]

A practical consideration for a local union involves action by an international union to increase the amount to be paid to it by its locals. There would appear to be nothing in 101 (a) (3) that would prevent such action. However, the matter to be resolved by the local is whether to increase the share of the dues paid to the international union or to resort to an increase in dues through the methods prescribed by this subsection.[27]

In *Brooks* v. *Local 30*,[28] plaintiffs alleged a violation of 101(a)(3) because in an election by secret ballot to raise the dues of the local union, the ballot was ambiguous. It provided for a reduction of dues from seven dollars to five dollars plus ten cents per hour (which would have increased the dues). The court stated that

25. 180 F.Supp. 806 (S.D.N.Y. 1960).
26. This subsection also provides for an increase in dues by labor organizations other than locals or federations of national or international labor organizations.
27. Cox, *supra* note 16 at 835.
28. 41 CCH. Lab. L. Rep. para. 16,583 (E.D. Pa. 1960).

since there was no showing that anyone was misled by the alleged ambiguity, plaintiffs' action should be dismissed.

Section 101 (a) (4). This subsection insures to the union member the right to sue. In addition, he is protected should he desire to communicate with a legislator or to petition the legislature. One of the two provisos in this subsection is, "That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings . . ."[29]

The constitutions of some unions compel the exhaustion of intra-union remedies before a member may file suit against the union or its officers. Such a provision should be contrary to public policy as a restriction on the right to a judicial determination of a grievance. However, the judicial doctrine which compels exhaustion of internal remedies is a different matter.[30]

Senator Kennedy said in this respect that the purpose of this subsection is not to eliminate intra-union grievance procedures under the constitution or by-laws of the union. He said that the body of State and Federal case law which requires, or does not require, the exhaustion of internal remedies is not meant to be affected.[31]

Several cases have been decided under this subsection. *Rizzo* v. *Ammond*[32] involved the challenging of the validity of a trusteeship. A New Jersey district court held that the principle remedy is the Secretary's and that the union member must comply with reasonable rules and regulations so that before suit can be instituted, an intra-union appeal must first have been perfected.

Johnson v. *Local Union*[33] involved a suit to enjoin an international union from interference with the activities of the local and from intimidating plaintiffs. The court held that subsection 101 (a) (4) need not be complied with because of the existence of the elaborate union appellate machinery and because the various appellate bodies do not sit often enough, nor does the constitution or by-laws require a decision within a certain time. This latter point, if it is to serve as a precedent, poses a very practical problem for unions whose constitution or by-laws do not contain a time limit for a determination of the question subsequent to the hearing.

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29. It is further provided in this subsection, "That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."
30. Cox, *supra* note 16 at 839.
31. 105 Cong. Rec. 16,414 (daily ed. Sept. 3, 1959).
32. 182 F.Supp. 456 (D. N.J. 1960).
33. 181 F.Supp. 734 (E.D. Mich. 1960).

In *Tomko* v. *Hilbert*,[34] the court held that since the constitution provided reasonable remedies that were not complied with, the action should be dismissed. The court noted as exceptions to the "exhaustion" rule that an intra-union appeal need not be undertaken if the appeal cannot yield results, nor if the appeal is unduly burdensome, nor if an irreparable injury to the member would result. It is thus probable that in these cases the courts will apply usual equitable principles.

One question that could arise is: Is it a violation of 101 (a) (4) as a limitation on the right to sue for a union to impose an assessment (to pay for costs to the union) on a member for unsuccessfully suing the union or the officers thereof. Senator Kennedy's statement[35] that it is the intent of this subsection to permit a member access to the courts without interference from the union would seem to indicate that such an exaction could not be legally imposed even if the due process guarantees of 101(a) (5) are complied with. In addition, it would seem that suits initiated by the members are in fact necessary for the existence and furtherance of good unionism and that the expenses incurred in the defense of such suits are not too high a price to pay for the disclosure of union affairs to members who are sufficiently interested and militant to undertake the expense and inconvenience of legal proceedings.

Section 101 (a) (5). The "due process" provision is contained in this subsection which protects members from being "fined, suspended, expelled, or otherwise disciplined" except for non payment of dues unless the member has been served with written charges, given a reasonable time to prepare his defense and afforded a full and fair hearing. Any constitutional provision or by-law inconsistent with this section "shall be of no force or effect".

One writer has stated, and with apparent justification, that the major failing of union disciplinary procedure is its failure to provide an independent judiciary. "Union trial bodies are composed of union members who typically have a special interest in the matters before them, even if they are not actually prejudiced".[36] This is one of the weaknesses to which Congress did not direct itself.

In *Flaherty* v. *Steelworkers*,[37] a California district court concluded that plaintiffs' were premature in their assertion that they would be unable to obtain a fair hearing because their appeal would be to the

34. 40 CCH Lab. L. Rep. para. 66,757 (W.D. Pa. 1960).
35. 105 Cong. Rec. 16,414 (daily ed. Sept. 3, 1959).
36. Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 874 (1960).
37. 41 CCH Lab. L. Rep. para. 16,517 (S.D. Cal. 1960).

very people whom they have sued and that their right to sue was infringed upon. The court stated that there had actually been no hearing, and plantiffs had not been disciplined; thus no injury was inflicted and plaintiffs must wait to see if the hearing is fair and whether discipline will result.

In *Gross* v. *Kennedy*[38] it was held that the removal of a union member from his employment at the employers request is a disciplinary proceeding. Therefore, the due process requirements of notice and a fair hearing must be afforded.

A determination by defendant union, in *Jackson* v. *Martin Company*,[39] that plaintiff should be disqualified as a committeeman under section 504 is not "discipline" as contemplated by the Act. (In addition, it was not the member's rights, as a member, that were affected.)

In *Detroy* v. *AGVA*,[40] a New York district court held that "otherwise disciplined" included the placing of plaintiff's name on an "unfair" list when so doing would deprive plaintiff of employment.

In *Strauss* v. *Teamsters*,[41] plaintiff alleged wrongful discharge from his position as business agent through a mistaken interpretation by the union of section 504. The court, in dismissing the complaint, stated that plaintiff was not fined, suspended or expelled as those words as used in 101 (a) (5) nor was he "otherwise disciplined". Plaintiff did not claim violation of a right based on his *membership*. If anything, there was a breach of contract.

Actually, "due process" has been the subject of a substantial amount of litigation prior to the enactment of LMRDA. The remedy was already available; it was a "more practical" remedy that was needed.[42]

Section 102. This section provides for the enforcement of Title I rights and for federal jurisdiction. The aggrieved member may[43] bring a suit in a U.S. district court in the district where the alleged violation occurred or where the principal union office is located.

The cases which involve jurisdiction are several and varied.[44] Thus, it has been held: that an employee of a union cannot sue under the Act and that there is no other basis for jurisdiction since a federal question was not involved;[45] that the court did not have

38. 183 F.Supp. 750 (S.D.N.Y. 1960).
39. 180 F.Supp. 475 (D. Md. 1960).
40. 41 CCH Lab. L. Rep. para. 16,563 (S.D.N.Y. 1960).
41. 38 CCH Lab. L. Rep. para. 66,073 (E.D. Pa. 1959).
42. Cox, *supra* note 1 at 838.
43. Section 103 preserves rights and remedies under State and Federal Law.
44. These cases are not limited to actions under Title I.
45. Strauss v. Teamsters, 38 CCH Lab. L. Rep. para. 66,073 (E.D. Pa. 1959).

jurisdiction of a mandamus action to compel an intra-union membership transfer since that right is determined by the constitution of the international and is not within the purview of Title I;[46] that absent diversity, there was no basis for jurisdiction since Title I does not guarantee the right to be a candidate for union office;[47] that the court could dismiss a suit because of lack of personal jurisdiction over an indispensable party, the president of the international or the trustee appointed by him;[48] that the international union is an indispensable party in an action by officers of a local to return the local to the control of the elected officers thereof;[49] that there is no jurisdiction, absent diversity, since administrative remedies have not been exhausted;[50] that there is no jurisdiction simply because a federal statute must be construed;[51] and that there is no jurisdiction over inter-union disputes on jurisdictional matters.[52]

It should be noted that in the McClellan Bill, the Secretary of Labor was authorized to sue under Title I. However, as enacted, the remedy is the member's. The only instance in which the Secretary can sue under Title I is for a violation of Section 104 which requires the unions to make available to members copies of collective bargaining contracts.[53] The right of the Secretary to sue as set forth in Section 210[54] is made specifically applicable to this section.

Section 609 and 610 of Title VI,[55] should also be examined in conjunction with Section 101 (a) (5). Section 609 makes it unlawful to fine, suspend, expel or otherwise discipline any union member for exercising any of his rights under the Act. This protection is practical since Section 102 is made applicable in the enforcement of this Section. Section 610 imposes criminal sanctions on any person who uses force or violence or the threat thereof, to restrain, coerce or intimidate any union member for the purpose of interfering with or preventing the exercise of any right to which he is entitled under the Act.

46. Hughes v. Local 11, International Ass'n of Bridge and Ornamental Iron Workers, AFL-CIO, 183 F.Supp. 552 (D.N.J. 1960).
47. Byrd v. Archer, 38 CCH Lab. L. Rep. para. 66,083 (S.D. Cal. 1959).
48. Rizzo v. Ammond, 182 F.Supp. 456 (D.N.J. 1960).
49. Flaherty v. McDonald, 178 F.Supp. 544 (S.D. Cal. 1959).
50. Flaherty v. McDonald, 178 F.Supp. 300 (S.D. Cal. 1960).
51. Jackson v. Martin Co., 180 F.Supp. 475 (D. Md. 1960)
52. Local 33, International Hod Carriers v. Mason Tenders District Council, 40 CCH Lab. L. Rep. para. 66,738 (S.D.N.Y. 1960).
53. Allen v. Armored Car Chauffeurs and Guards, Local 820, Teamsters, 185 F.Supp. 492 (D.N.J. 1960).
54. "Whenever it shall appear that any person has violated or is about to violate any of the provisions of this title, the Secretary may bring a civil action . . . ."
55. Title VI contains miscellaneous provisions: Investigations, Extortionate picketing, Retention of Rights under other Federal and State Laws, Effect on State Laws, Service of Process, Administrative Procedure Act, Other Agencies and Departments, Criminal Contempt and Separability Provisions.

Consequently, appropriate criminal liabilities are provided for preserving to the union member a practical remedy to correct the infringement of his rights as protected by the Act.[56]

TITLE IV

Several other sections of the Act which relate to the member's rights should be referred to. Title IV governs election procedures. Subsection 402 (a) provides that a member who has exhausted union internal remedies *or* who has invoked such remedies without obtaining a final decision within three calendar months after their invocation may file a complaint with the Secretary of Labor within one calendar month thereafter alleging violation of Section 401. The challenged election shall be presumed valid pending a final decision.[57]

If the member has not obtained a final decision within three calendar months, he may file a complaint with the Secretary. Alternatively, he may await a determination and if it is unfavorable to him, he may then within one month file a complaint.[58]

If the complaint is filed and upon a finding by the Secretary that a violation of Section 401 has occurred, he shall, within sixty days after the filing of the complaint, file suit to set aside the invalid election and to direct the conduct of a new one. The remedy provided for challenging the validity of an election is exclusively that of the Secretary.

One case held,[59] in an action under Title I, that there was no jurisdiction of plaintiff's claim because Title IV procedures provide for challenging an election *after* the election. In *Myers v. Operating Engineers,*[60] the court held that after union election misconduct, there must be prompt action by the union member or the bill of rights does not afford a remedy; but regardless, an election cannot be set aside until after the member has applied to the Secretary.

TITLE III

Title III regulates trusteeships.[61] Here also, the union member is provided with an enforcement remedy. Subsection 304 (a) provides that upon written complaint from a member or subordinate

56. Aaron, *supra* note 36 at 877.
57. Section 403 preserves pre-election remedies but post election remedies belong exclusively to the Secretary.
58. 29 C.F.R. § 452.15 (1959).
59. Byrd v. Archer, 38 CCH Lab. L. Rep. para. 66,083 (S.D. Cal. 1959).
60. Myers v. International Union of Operating Engineers, 40 CCH Lab. L. Rep. para. 66,436 (E.D. Mich. 1960).
61. Section 3 (h) defines trusteeship as, ". . . any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or by-laws".

labor organization alleging violation of Title III, the Secretary shall investigate. If he has probable cause to believe that a violation has occurred without being remedied, he shall bring an action for appropriate relief. The subsection then provides that, "Any member or subordinate body of a labor organization affected by violation of this title . . . may bring a civil action in any district court . . . ."

The question has arisen, and has been the subject of judicial determination, as to whether the administrative remedies vested in the Secretary must first be exhausted before a member or subordinate body may file suit under this subsection.

On the premise that Congress would not write into the law a superfluous or non-existent remedy, it is submitted that the answer to the problem is that the administrative remedy need not be exhausted and that any requirement that it be so would lead to a result wholly inconsistent with Congressional purpose and would render the right of the union member nugatory.

This subsection provides that upon complaint by a member, the Secretary *shall* investigate and upon a finding of probable cause, institute suit. Section 306 provides that upon the filing of a complaint by the Secretary, "the jurisdiction of the district court over such trusteeship shall be exclusive and the final judgment . . . res judicata."

Thus, the only circumstance under which a union member could exercise his right to sue under this subsection is, if upon complaint to the Secretary, the investigation ended in a determination of *no* probable cause. However, if the Secretary does find probable cause, then he must act and the court's jurisdiction becomes exclusive thereby rendering useless the remedy that Congress provided to the member or subordinate body.

Flaherty v. *McDonald*[62] involved a suit under Section 304. The action was dismissed because the administrative remedy (i. e., complaint to the Secretary) provided had not been exhausted. The court stated that the Secretary must determine the existence of a violation before a member's suit may be instituted.

However, in *Local* v. *IBEW*,[63] a Maryland district court held that a determination of probable cause by the Secretary in trusteeship matters is not a condition precedent to the institution of suit by the individual member or by the local union. The court buttressed its conclusion by extensive reference to the legislative history.

62. 183 F.Supp. 300 (S.D. Cal. 1960); see also Flaherty v. Steelworkers, 41 CCH Lab. L. Rep. para. 16,517 (S.D. Cal. 1906).

63. Local 28, International Brotherhood of Electrical Workers v. International Brotherhood of Electrical Workers, 184 F.Supp. 649 (D. Md. 1960).

TITLE V

Section 501(a) establishes certain fiduciary obligations of officers, agents, shop stewards and other representatives of a union. Subsection (b) vests in the individual member the right to sue to recover damages, secure an accounting or to obtain other appropriate relief if the union or its officers, following a breach of their fiduciary duties, refuse to act within a reasonable time after being requested to do so. The proceeding by the member however, can be brought only upon leave of court upon a verified complaint and for good cause shown. The application may be ex parte. Provision is also made for the awarding of expenses and attorney fees as a part of the recovery.

Assuming that unauthorized expenditures of union funds were made prior to the enactment of the Act, the question arises as to whether a union member has a cause of action under 501 (b). It can be plausibly argued that, in the absence of a clear expression to the contrary, the Act is not to be given a retroactive effect and several decisions under other sections of the Act so state.[64]

To the contrary, it could be argued, again quite plausibly, that the element of retroactivity is not involved. Thus, if subsequent to the enactment of the Act, union officers discover that union funds were pilfered prior to enactment, it is incumbent upon them because of their 501 (a) fiduciary obligations, to institute a suit for an accounting, or damages. That they have a duty to protect union funds is undeniable; that the funds were taken from the union treasury prior to enactment is immaterial.[65]

Local 107 v. *Cohen*,[66] the only case that has been passed on by an appellate body,[67] involved a suit for injunction to prohibit union officers from further using union funds to pay for legal fees in the defense of civil or criminal actions arising out of the alleged misuse of the funds by such officers. Subsection 501 (a), in addition to the provisions set forth above, provides that, "A general exculpatory provision in the constitution and by-laws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the

64. Flaherty v. United Steelworkers of America, AFL-CIO, 41 CCH Lab. L. Rep. para. 16,517 (S.D. Cal. 1960); Robertson v. Banana Handlers, International Longshoreman's Ass'n, Local 1800, AFL-CIO, 183 F.Supp. 423 (E.D. La. 1960); Rizzo v. Ammond, 182 F.Supp. 456 (D.N.J. 1960); Smith v. General Truck Drivers, Local 467, Teamsters, 181 F.Supp. 14 (S.D. Cal. 1960).

65. For a comment on the fiduciary obligation, see Dugan, *Fiduciary Obligations Under the New Act*, 48 Geo. L. Rev. 277 (1959).

Section 501 (c) provides criminal sanctions for *e. g.*, embezzlement, conversion, etc.

66. Highway Truck Drivers, Local 107, Teamsters v. Cohen, 41 CCH Lab. L. Rep. para. 16,603 (3rd Cir. 1960).

67. But see DeVeau v. Braistad, 40 CCH Lab. L. Rep. para. 66,583 (S.Ct. U.S. 1960).

duties declared by this section shall be void as against public policy". The Third Circuit Court of Appeals affirmed an injunction to prevent such officers from using union funds for legal expenses in the actions against them. The court stated that although the resolution (to vote funds) was not within the prohibition of 501 (a) it was invalid because "it authorized action beyond the powers of the union as derived from its constitution and was inconsistent with the aims and purposes of the. . . Act".

CONCLUSION

The Act is the first step in the regulation of the labor unions' internal affairs and although the subject of considerable criticism it is a far reaching, constructive effort to deal with certain basic problems. Only a few rights of action were created that did not previously exist, but the enactment of the law focused, indeed vividly, the attention of union members and their attorneys on the existence of such rights.[68] This focusing of attention is of considerable import since the accomplishment and completion of the objectives of the Act lies primarily on individual action. If the members are sufficiently diligent in effectuating the enforcement of these rights, there should be, not only increased union "democracy", but, from the attorneys' vantage point, a substantial (though not as substantial as some critics of the bill have indicated) increase in litigation. In consequence, many attorneys may find it necessary to become familiar with the complexities of labor law. Unquestionably, an attention directed to the development of LMRDA may be profitable not only pecuniarily, but possibly in avoiding extensive, detailed research in the future. But probably the most judicious counsel was given in a recent bar association address. Professor Aaron[69] stated that lawyers should, ". . . exert your efforts at the outset to find out what the dispute is really about and settle it by agreement rather than by litigation."

68. Cox, *supra* note 16 at 853.

69. Benjamin Aaron, Acting Director, Institute of Industrial Relations, University of California. Address at Beverly Hills Bar Association luncheon.